

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

BRYAN LEE STETSON,

Plaintiff,

No. C15-5524 BHS-KLS

WASHINGTON DEPARTMENT OF
CORRECTIONS, BERNARD
WARNER, KATHRYN L. BRUNER,

Defendants.

REPORT AND RECOMMENDATION

Before the Court is Plaintiff Bryan Lee Stetson's Motion for Preliminary Injunction. Dkt. 19. Mr. Stetson asks the Court for an order directing Defendants to refrain from transferring him from Stafford Creek Corrections Center (SCCC) so that he may continue to have use of SCCC's law library to litigate this case. *Id.*, p. 1. The Court recommends that Mr. Stetson's motion be denied.

FACTS

Mr. Stetson filed this *pro se* civil rights action alleging that Defendants retaliated against him by moving him to another housing unit after he filed a grievance. Dkt. 8. In his motion seeking injunctive relief, Mr. Stetson states that he was promoted to a lower custody level on September 9, 2015, and may be transferred to a lower-custody facility without a law library at

1 some time in the future. Dkt. 19, at 2. It is undisputed that no transfer date has been set at this
2 time.

3 According to Jodie Wright, a SCCC Classification Counselor who is currently Mr.
4 Stetson's assigned counselor at SCCC, an educational/vocational hold is currently in place to
5 keep Mr. Stetson at SCCC through December 31, 2015 so he may complete a welding program.
6 Dkt. 22, Exhibit 1, Declaration of Jodie Wright, at ¶ 6. Ms. Wright is able to prevent a transfer
7 by placing an institutional hold on an offender who wishes to remain at SCCC to work in the law
8 library on pending litigation. *Id.*, Exhibit 1, Wright Decl., at ¶ 3. After learning that an offender
9 wants an institutional hold, Ms. Wright contacts the SCCC law librarian to confirm that the
10 offender has an open case and to determine how long the offender requires a hold, which will
11 depend on the number of pending motions and deadlines in the case. The time estimate for a
12 hold is usually in the range of three to four months. Ms. Wright will then place an institutional
13 hold to prevent the offender's transfer from SCCC. If the offender's litigation extends beyond
14 the timeframe of initial hold, additional holds can be added as needed. *Id.*
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16 Ms. Wright knows of Mr. Stetson's pending litigation and has spoken with him about his
17 desire for an institutional hold. *Id.*, Exhibit 1, Wright Decl., at ¶ 5; Dkt. 19 at 3, 5. Ms. Wright
18 believes that placing an additional institutional hold on Mr. Stetson while his education hold
19 remains active is premature. *Id.*, at ¶ 6. After he has completed his educational program, he can
20 speak with Ms. Wright to determine his need for an institutional hold, based on his needs at that
21 time to access a law library for work on his pending litigation. *Id.*
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23 Mr. Stetson knows he can obtain the institutional hold he wants by working with DOC
24 staff and he has been encouraged to work with his counselor and unit team in obtaining the hold.
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1 Dkt. 19, at 5, 16. Mr. Stetson does not dispute this option is available but argues that his motion
2 is a “peremptory challenge” to any future transfer. Dkt. 25, at 3-4.

3 DISCUSSION

4 Injunctions are “to be used sparingly, and only in a clear and plain case.” *Rizzo v. Goode*,
5 423 U.S. 362, 378 (1976) (quoting *Irwin v. Dixon*, 50 U.S. 10, 33, 13 L. Ed. 25, 9 How. 10
6 [1850]); *see also Sampson v. Murray*, 415 U.S. 61, 83 (1974). “A preliminary injunction is an
7 extraordinary remedy never awarded as of right.” *Winter v. Natural Res. Def. Council, Inc.*, 555
8 U.S. 7, 24 (2008). Instead, injunctive relief “may only be awarded upon a clear showing that the
9 plaintiff is entitled to such relief.” *Id.* at 22. To obtain a preliminary injunction, a party must
10 demonstrate that: (1) he is likely to succeed on the merits; (2) he will likely suffer irreparable
11 harm in the absence of preliminary relief; (3) the balance of equities tips in his favor; (4) an
12 injunction is in the public interest. *Id.* at 20.

14 Injunctions are disfavored and “not granted unless extreme or very serious damage will
15 result and are not issued in doubtful cases or where the injury complained of is capable of
16 compensation in damages.” *Anderson v. United States*, 612 F.2d 1112, 1115 (9th Cir. 1979)
17 (quoting *Clune v. Publishers’ Ass’n of New York City*, 214 F. Supp. 520, 531 [S.D.N.Y. 1963]).
18 This caution applies even more strongly in cases involving the administration of state prisons.
19 *Turner v. Safley*, 482 U.S. 78, 85 (1987) (“Prison administration is, moreover, a task that has
20 been committed to the responsibility of those [executive and legislative] branches and separation
21 of powers concerns counsels a policy of judicial restraint. Where a state penal system is
22 involved, federal courts have … additional reason to accord deference to the appropriate prison
23 authorities.”); *Gilmore v. California*, 220 F.3d 987 (9th Cir. 2000). Finally, under the Prison
24 Litigation Reform Act, Congress has expressly required that any grant of prospective relief with
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1 respect to prison conditions be narrowly drawn, extend no further than necessary, and be the
2 least intrusive means necessary for correction. 18 U.S.C. § 3626(a)(1)(A); *see Gomez v. Vernon*,
3 255 F.3d 1118, 1129 (9th Cir. 2001).

4 At the outset, the Court notes that the injunctive relief sought by Mr. Stetson – a transfer
5 hold pending litigation of this case – is wholly unrelated to the claims raised in his complaint –
6 that he was retaliated against after he filed a grievance. A preliminary injunction is only
7 intended to give intermediate relief of the same character that will be granted should the party
8 seeking the injunction succeed on the underlying claims. *See De Beers Consol. Mines Ltd. v.*
9 *United States*, 325 U.S. 212, 220 (1945); *Devose v. Herrington*, 42 F.3d 470, 471 (8th Cir. 1994)
10 (per curiam). Injunctions are not appropriate to address matters that are wholly outside of the
11 underlying lawsuit, *Devose*, 42 F.3d at 471, and therefore, Mr. Stetson’s motion may be denied
12 on this basis alone.

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15 **A. Likelihood of Success**

16 A party seeking a preliminary injunction must clearly show a likelihood of succeeding on
17 the merits of his claims. *Winter*, 555 U.S. at 20. Mr. Stetson has provided no evidence that he is
18 likely to succeed on the merits of his underlying First Amendment retaliation claim.

19 Moreover, there is no evidence that any potential transfer to a facility without a law
20 library will deprive him of his right to access the courts. *See, e.g., Lewis v. Casey*, 518 U.S. 343,
21 348-49 (1996) (violation of the right of access requires a showing of an actual injury, i.e., actual
22 prejudice with respect to contemplated or existing litigation, such as the inability to meet a filing
23 deadline or to present a claim). *Id.* at 348. In his reply, Mr. Stetson cites *Rhodes v. Robinson*,
24 408 F.3d 559, 568 (9th Cir. 2004) for the proposition that it is illegal for corrections officials to
25 transfer a plaintiff solely in retaliation for the exercise of his First Amendment rights. He
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1 provides no evidence that this is in fact occurring. Rather, the record reflects that no transfer has
2 been ordered and Mr. Stetson may submit his request to extend the hold based on his library
3 needs.

4 **B. Irreparable Harm**

5 A plaintiff seeking a preliminary injunction has the burden of demonstrating that he will
6 be exposed to irreparable harm. *Caribbean Marine Services v. Baldrige*, 844 F.2d 668, 674 (9th
7 Cir. 1988). Speculative injury does not constitute sufficient irreparable injury; only a “strong
8 threat of irreparable injury before trial is an adequate basis” for injunctive relief. *Id.*

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10 Here, Mr. Stetson’s injury is purely speculative. As noted above, Mr. Stetson is not
11 scheduled to be transferred, a transfer hold currently keeps Mr. Stetson at SCCC through
12 December 31, 2015, and he may work with his counselor to extend the hold based on his need
13 for a law library at that time.

14 **C. Balance of Equities and Public Interest**

15 To be entitled to a preliminary injunction, a plaintiff must show that the equities tip in his
16 favor and that the injunction is in the public interest. *Winter*, 555 U.S. at 20. Courts must
17 exercise restraint in evaluating prisoner complaints and should avoid supervising the minutia of
18 prison life. *Turner v. Safley*, 482 U.S. 78, 85 (1987); *McKune v. Lile*, 536 U.S. 24, 37 (2002). The
19 public interest also favors giving state correctional officials the discretion to manage correctional
20 facilities. *See e.g., Turner*, 482 U.S. at 85.

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22 The equities do not tip in Mr. Stetson’s favor and the public interest does not favor
23 injunctive relief in this case where it is undisputed that Mr. Stetson will suffer no irreparable
24 harm and he can work with DOC officials to extend the transfer hold at SCCC.

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CONCLUSION

Based on the foregoing, the Court finds that Mr. Stetson is not entitled to the injunctive relief he seeks and therefore, his emergency motion for temporary restraining order (Dkt. 19) should be **DENIED**.

Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal Rules of Civil Procedure, the parties shall have fourteen (14) days from service of this Report and Recommendation to file written objections. See also Fed. R. Civ. P. 6. Failure to file objections will result in a waiver of those objections for purposes of appeal. *Thomas v. Arn*, 474 U.S. 140 (1985). Accommodating the time limit imposed by Rule 72(b), the Clerk is directed to set the matter for consideration on **December 18, 2015**, as noted in the caption.

DATED this 24th day of November, 2015.

Ken Lstrom

Karen L. Strombom
United States Magistrate Judge